

United States Magistrate Judge James P. Donohue

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WESTERN DISTRICT OF WASHINGTON
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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In the Matter Of:

MAY CREEK LANDFILL SITE
Renton-Issaquah Road SE,
Renton, King County, Washington.

18 MS - 00114 JPD
CASE NO.

**UNITED STATES' *EX PARTE*
APPLICATION FOR ADMINISTRATIVE
WARRANT FOR ENTRY, INSPECTION,
AND RESPONSE PURSUANT TO 42
U.S.C. § 9604(e)**

I. INTRODUCTION

COMES NOW the United States of America, by and through Annette L. Hayes, United States Attorney for the Western District of Washington, and Assistant United States Attorney Katie D. Fairchild, and files this *Ex Parte* Application for Administrative Warrant for Entry, Inspection, and Response, pursuant to 42 U.S.C. § 9604(e) ("Application").

On October 3, 2018, Assistant Regional Counsel for the Environmental Protection Agency ("EPA"), Kristin Leefers, requested consent to access the May Creek Landfill Site in Renton, Washington ("the Site"), from the property owner, Charles Pillon, in order to conduct an investigation to determine the presence of and remove hazardous substances pursuant to Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act

1 (“CERCLA”), 42 U.S.C. § 9601, *et seq.*¹ In a series of emails, Mr. Pillon demonstrates his refusal
 2 to the EPA to access the Site.

3 Since the early 1990s, Mr. Pillon has operated the May Creek Landfill Site as an unlicensed
 4 solid waste landfill. In 2016, the EPA began assisting the State of Washington with its efforts to
 5 investigate and cleanup the Site. Through its work with state and county authorities, the EPA has
 6 observed and analyzed conditions on the Site and determined the presence and likely presence of
 7 numerous hazardous substances and/or pollutants or contaminants. To date, no cleanup has
 8 occurred at the Site.

9 Because Mr. Pillon has refused the EPA access to perform an inspection and removal of
 10 hazardous substances or pollutants or contaminants at the Site, the United States respectfully
 11 requests that the Court immediately issue an administrative warrant pursuant to
 12 42 U.S.C. § 9604(e), which authorizes the EPA:²

- 13 1. To enter the Site during reasonable business hours.
- 14 2. To inspect, sample, and/or remove any containers, equipment, structures, or other
 15 materials that are suspected of containing hazardous substances or pollutants or
 16 contaminants at or within the Site.
- 17 3. To inspect and obtain samples from the soil and surface water that are suspected of
 18 containing hazardous substances or pollutants or contaminants at or within the Site.

20 ¹ CERCLA authorizes the EPA to enter and inspect any facilities or premises where any hazardous substances,
 21 pollutants or contaminants may be located (or have been stored) or where entry is needed to determine the need for
 and initiate appropriate response actions. *See* 42 U.S.C. §§ 9604(a), (b) & (e).

22 ² Depending upon the results of requested entry and inspection, the EPA anticipates that it subsequently will be
 23 initiating a Complaint under CERCLA in order to gain access to the Site to install groundwater monitoring wells,
 conduct groundwater sampling, and conduct soil removal. However this *ex parte* request is limited in scope to the
 most pressing and least invasive response efforts.

4. To collect, consolidate, package, and transport for proper disposal all hazardous substances and contaminated materials found at or within the Site, as deemed necessary by the EPA to ensure the protection of public health or welfare or the environment.
5. To conduct an asbestos survey at the Site.
6. To take photographs relating to Site conditions.
7. To take all steps necessary to determine the need for response action at or within the Site to abate, prevent, or mitigate any release or substantial threat of release into the environment of any hazardous substance or pollutant or contaminant.

Additionally, in the event that the EPA determines that the Site conditions present a danger to the public health or welfare or to the environment, the United States also requests that the Court authorize the EPA to initiate such immediate response actions at the Site as necessary to stabilize conditions before seeking further direction from the Court.

II. STATEMENT OF FACTS

A. Location and History of May Creek Landfill Site

The May Creek Landfill Site is an approximately 10-acre parcel of property located in a semi-rural residential area at 15753 Renton-Issaquah Road SE, Renton, King County, Washington. *See* Declaration of Jeffrey Fowlow ("Fowlow Decl.") at ¶ 2. Mr. Pillon has operated the Site as an unpermitted solid waste landfill since approximately 1993. *Id.*; Ex. A, pp. 2-4. Metal scrapping, auto wrecking, waste incineration, metal smelting, biodiesel production, and disposal of asbestos-containing material have been documented at the Site. *Id.*; Ex. A, pp. 5-6. The Site contains an unknown quantity of waste, including abandoned vehicles, appliances, construction materials, and numerous unlabeled containers. *Id.*; Ex. A, pp. 2-4. The property is hilly with very limited entry and egress on steep, unpaved dirt roads. *Id.* Access to the Site is encumbered by solid waste and

1 inoperable vehicles blocking access. *Id.* Over the decades, the Site has been investigated more
2 than 20 times by local, state, and federal authorities for conducting unpermitted activities as well
3 as hazardous waste management violations. *Id.*; Ex. A, pp. 5-6. As a result, Mr. Pillon has been
4 assessed thousands of dollars in fines, but no cleanup of the Site has occurred. *Id.*

5 Mr. Pillon lives in a house on the Site with at least one other family member. *Id.*; Ex. A,
6 pp. 2-4. He has allowed homeless persons to camp or reside in inoperable recreational vehicles on
7 the Site, but it is unknown whether any currently reside on the property. *Id.*; Ex. A, p. 7. Drainage
8 ditches on the property drain approximately 1,000 feet to May Creek, which flows to Cedar River,
9 which is part of the Cedar River-Lake Washington Watershed. *Id.*; Ex. A, pp. 2-4. Several dozen
10 residences and a school are within approximately one mile of the Site. *Id.*

11 **B. February 2016 Sampling by the EPA and Its Contractors**

12 On February 25, 2016, the EPA On-Scene Coordinator (“OSC”), Mr. Fowlow, and seven
13 EPA contractors conducted a one-day sampling event at the request of the Washington State
14 Attorney General’s Office. *Id.* at ¶ 3; Ex. B, p. 2. The EPA, along with the Washington
15 Department of Ecology, gained access to the Site through a warrant obtained by the Washington
16 State Patrol (“WSP”). *Id.* The EPA’s role was to (1) identify and sample areas of potentially
17 contaminated soil; and (2) identify, sample, and analyze samples from containers potentially
18 containing hazardous substances. *Id.* at ¶ 3; Ex. A, p. 2. At the Site, Mr. Fowlow observed
19 hundreds of unlabeled and mislabeled containers in a highly deteriorated condition, many of which
20 were actively leaking. *Id.* at ¶ 5; Ex. A, pp. 2, 8. Mr. Fowlow further observed that several acres
21 of the property were covered in solid waste potentially 20-30 feet deep, making it difficult to know
22 if there were additional containers of unknown substances, making it difficult to obtain soil
23 samples. *Id.* at ¶¶ 4-5; Ex. A, pp. 2, 8.

Results from all 13 surface soil samples indicated that soil samples exceeded cleanup levels for cadmium, chromium, benzo(a)pyrene, total toxicity equivalent concentration (“TTEC”), and/or motor oil range organics. *Id.* at ¶ 6; Ex. A, pp. 2, 7-9; Ex. B, pp. 9-21. Exposure to these chemicals can present a variety of health risks and are “hazardous substances” within the meaning of Section 101(14) of CERCLA, 42, U.S.C. § 9601(14). *Id.* at ¶¶ 6-7; Ex. A, pp. 7-9.

EPA contractors also analyzed samples taken from nine, on-site containers to determine whether the contents presented Resource Conservation and Recovery Act (“RCRA”) 42 U.S.C. §§ 6901, *et seq.* hazardous waste characteristics. *Id.* at ¶¶ 6-7; Ex. A, pp. 2, 7-9; Ex. B., pp. 9-21. Testing confirmed the presence of toxic, ignitable, and corrosive materials in the containers. *Id.* The EPA concluded that there were likely dozens, or even hundreds, of chemical containers at the Site that contain substances that exhibit these RCRA hazardous waste characteristics. *Id.* at ¶ 6; Ex. A, p. 2.

C. Mr. Pillon’s Conviction and Sentence

Following the February 2016 Site visit and investigation, the Washington State Attorney General’s Office brought criminal charges against Mr. Pillon in King County Superior Court. *Id.* at ¶ 8. Mr. Fowlow testified regarding his observations and the EPA’s analysis at trial. *Id.* On June 15, 2018, Mr. Pillon was convicted of two felony counts of illegal auto wrecking and hazardous materials storage and one misdemeanor for solid waste handling. *Id.*; Ex. C. As part of the conditions of his sentence, Mr. Pillon was ordered to cease accepting waste onto his property, only dispose of waste through appropriate disposal professionals, and “cooperate fully with any and all clean-up efforts taking place at the property.” *Id.* Subsequently, the sentencing court found that Mr. Pillon violated conditions of his sentence and issued an order directing that, “No further activity on the property are allowed by Defendant. *The State, County, and EPA are*

1 *to have un-fettered access to the Site w/o any further legal process.” Id.; Ex. D (emphasis added).*

2 **D. July 2018 Site Visit and the EPA’s Requests for Access to Conduct Removal Action**

3 Following Mr. Pillon’s convictions, on July 17, 2018, the Washington Department of
4 Ecology requested the EPA perform an emergency removal action:

5 An emergency removal action is necessary to mitigate an immediate threat to public
6 health, welfare, and the environment posed by the presence of uncontrolled
7 hazardous materials left on the property. . . . King County and Ecology lack the
8 funding and personnel to recover, identify, remove and dispose of waste of this
9 volume. We request the assistance of EPA’s Emergency Response Program to
address the identification and removal of the hazardous substances for off-site
disposal. Conditions at the property constitute a threat to public health and welfare
and the environment, and justify a removal action being conducted by EPA at the
property.

10 *Id.* at ¶ 9, Ex. E.

11 On July 26, 2018, the EPA, EPA’s contractor, Washington State Department of Ecology,
12 and King County Solid Waste Division personnel visited the Site in order to evaluate the extent of
13 contamination and plan for a removal action under CERCLA. *Id.* at ¶ 10; Ex. F, pp. 3-11. Mr.
14 Fowlow attended for the EPA. He received verbal consent from Mr. Pillon to walk around and
15 observe the property, however, Mr. Pillon refused to sign a written consent form for entry. *Id.*
16 While at the Site, Mr. Fowlow observed approximately 250 visible containers. *Id.* at ¶ 11; Ex. F,
17 pp. 3-11. Most of the containers did not have labels and there was no recognizable storage or
18 organization system. *Id.* Mr. Fowlow also observed evidence of container releases, including
19 actively leaking containers and stained soil. *Id.* Mr. Pillon further informed Mr. Fowlow that Mr.
20 Pillon had emptied containers, supposedly containing latex paint, onto wood chips spread directly
21 on the soil. *Id.* at ¶ 12; Ex. F, pp. 3-11. Mr. Fowlow was unable to take samples at the time to
22 determine which substances had been released because he was prepared for only conducting a
23 visual inspection in preparation for further response actions at a later date, and thus did not have

1 the necessary sampling equipment with him. *Id.* Based upon his previous observations, Mr.
2 Fowlow estimates that dozens to hundreds of containers have been dumped by Mr. Pillon. *Id.* In
3 addition, Mr. Fowlow observed suspected asbestos containing material, but also was unable to test
4 it at the time. *Id.* at ¶ 11.

5 On August 3, 2018, Mr. Pillon emailed Mr. Fowlow outlining various objections he had to
6 EPA involvement at the Site. *Id.* at ¶ 14; Ex. G. Mr. Pillon represented that he intended to conduct
7 an “owner clean-up process” himself.³ *Id.* Mr. Pillon sent emails to the EPA on September 12
8 and 26, again objecting to the EPA involvement on the Site and claiming a right to an owner-clean
9 up. *Id.* at ¶ 15; Ex. H-I. On October 3, 2018, Ms. Leefers wrote to Mr. Pillon stating the EPA’s
10 intent to conduct an assessment and cleanup work under CERCLA, explaining the basis for the
11 proposed action, and requesting Mr. Pillon’s consent for access to the Site. *Id.* at ¶ 16; Ex. J. In
12 response, Mr. Pillon sent a series of emails to the EPA outlining his objections to the EPA’s request
13 and proposed plan. *Id.* at ¶ 17; Ex. K-L. Mr. Pillon’s email correspondence indicates his refusal
14 to provide consent for the EPA to access the Site as requested. On October 29, 2018, Ms. Leefers
15 emailed Mr. Pillon to request access for a Site walk to “visually survey the area in light of proposed
16 cleanup activities.” *Id.* at ¶ 18; Ex. M. Mr. Pillon responded with multiple emails indicating his
17 refusal to consent. *Id.* at ¶ 19; Ex. N-Q.

18 Based on its investigation, the EPA has reason to believe that there has been a release
19 and/or there is a threat of a release at or from the Site of hazardous substances, pollutants or
20 contaminants, specifically cadmium, chromium, benzo(a)pyrene, TTEC, motor oil range organics,
21

22 ³ The EPA does not agree that Mr. Pillon has conducted or is capable of conducting an appropriate owner cleanup at
23 the Site.

1 and/or lead. *Id.* at ¶ 13; Ex. A-B, F. Mr. Pillon's recent emptying of the contents of unidentified
 2 containers onto wood chips spread on the soil at the Site heightens the urgency of the EPA's
 3 concern. Increased rain during the upcoming winter months further increases the chances that
 4 hazardous substances may migrate to nearby properties and to May Creek and the Cedar River-
 5 Lake Washington watershed. There is no other known agency capable of promptly responding to
 6 the environmental threats posed by this Site. In light of these concerns, the EPA needs to obtain
 7 immediate access to the Site in order to inspect, sample, and remove hazardous materials at the
 8 Site.

9 III. ANALYSIS

10 A. CERCLA

11 CERCLA authorizes the EPA, through delegations of authority from the President,⁴ broad
 12 powers to investigate and clean up hazardous waste sites:

13 Whenever (A) any hazardous substance is released or there is a
 14 substantial threat of such a release into the environment, or (B) there
 15 is a release or substantial threat of release into the environment of
 16 any pollutant or contaminant which may present an imminent and
 17 substantial danger to the public health or welfare, the President is
 18 authorized to act, consistent with the national contingency plan, to
 19 remove or arrange for the removal of, and provide for remedial action
 relating to such hazardous substance, pollutant, or contaminant at any
 time (including its removal from any contaminated natural resource),
 or take any other response measure consistent with the national
 contingency plan which the President deems necessary to protect the
 public health or welfare or the environment.

20 42 U.S.C. § 9604(a)(1);⁵ *see also* 42 U.S.C. § 9604(b)(1):

21 ⁴ The President of the United States has delegated most of the authority for administering CERCLA to the
 22 Administrator of the EPA. *See* Exec. Order No. 12,418, 48 Fed. Reg. 20,891 (May 5, 1983); Exec. Order No. 12,580,
 52 Fed. Reg. 2,923 (January 29, 1987).

23 ⁵ The term "hazardous substance" is broadly defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and
 includes all substances designated at 40 C.F.R. Table 302.4 promulgated pursuant to 42 U.S.C. § 9602. It also includes

Whenever the President is authorized to act pursuant to subsection (a) of this section..., he may undertake such investigations, monitoring, surveys, testing, and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, pollutants or contaminants involved, and the extent of danger to the public health or welfare or to the environment. ...

Section 104(e) of CERCLA (42 U.S.C. § 9604(e)) gives the EPA broad access authority in order to effectuate the purposes of CERCLA, including the authority to:

Enter a “facility, establishment, or other place or property where any hazardous substance or pollutant or contaminant may be or has been generated, stored, treated, disposed of, or transported from ... [or] released ... [or] such release is or may be threatened ... [or] where entry is needed to determine the need for response or the appropriate response or to effectuate a response action under this subchapter.”
42 U.S.C. § 9604(e)(3)(A)-(D).

Inspect and obtain samples from any “facility, establishment, or other place or property . . . or from any location of any suspected

hazardous waste having the characteristics identified under or listed pursuant to RCRA, 42 U.S.C. § 6921. Cadmium, chromium, benzo(a)pyrene, and asbestos, all of which were found or suspected to be found at the Site, are listed hazardous substances pursuant to 40 C.F.R Table 302.4. The toxic, ignitable, and corrosive materials START analyzed in container samples also likely meet the definition of “hazardous” waste under RCRA. *See Fowlow Decl.* ¶¶ 7, 13.

The term “pollutants or contaminants” is also broadly defined in Section 101(33) of CERCLA, 42 U.S.C. § 9601(33), to “include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into an organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring....”

A “release” is defined at section 101(22) of CERCLA, 42 U.S.C. § 9601(22), to include, with certain exceptions not applicable here, “any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.”

“Removal” is defined in section 101(23) of CERCLA, 42 U.S.C. § 9601(23), to mean “the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release.”

The terms “respond” or “response” is defined in section 101(25) of CERCLA, 42 U.S.C. § 9601(25), to mean “remove, removal, remedy, and remedial action,” and “all such terms (including the terms ‘removal’ and ‘remedial action’) include enforcement activities related thereto.”

hazardous substance or pollutant or contaminant.” 42 U.S.C. § 9604(e)(4)(A).

B. Issuance of *Ex Parte* Warrant

This Court has the authority to issue an *ex parte* administrative warrant pursuant to 42 U.S.C. § 9604 when, as here, the “owner will not consent to the EPA’s proposed activities.” *In re Yoder's Slaughterhouse Site*, 519 F. Supp. 2d 574, 579 (D. Md. 2007).⁶ The “grant of an administrative search warrant is governed by lesser standards than the ‘probable cause’ standard in criminal law.” *In re Alameda Cnty. Assessor's Parcel Nos. 537-801-2-4 & 537-850-9*, 672 F. Supp. 1278, 1287 (N.D. Cal. 1987). Indeed, the Court may issue an *ex parte* administrative search warrant if: (1) “reasonable legislative or administrative standards for conducting an . . . inspection are satisfied with respect to a particular [establishment]”; and (2) “probable cause . . . [is] based . . . on specific evidence of an existing violation.” *Id.* (quoting *Marshall v. Barlow's Inc.*, 436 U.S. 307, 320 (1978)). “Reasonableness is . . . the ultimate standard.” *Marshall* at 315 (internal citation omitted).

In the present case, the United States respectfully submits that the EPA has produced sufficient evidence to justify issuance of the administrative warrant pursuant to CERCLA. Specifically, as set forth in the Fowlow Declaration, the United States has produced specific evidence that cadmium, chromium, benzo(a)pyrene—each of which qualifies as a “hazardous substance” pursuant to CERCLA—have been released or pose a threat of release at the Site. *See*

⁶ *See also In the Matter of Green Lake Chem. House Site*, No. MS 14-028 (W.D. Wash., Apr. 1, 2014) (Administrative Warrant for Entry and Inspection Pursuant to 42 U.S.C. § 9604(e)); *In the Matter of Cashman Mill Site*, No. MS 13-115, (W.D. Wash., Aug. 1, 2013) (Administrative Warrant for Entry and Inspection Pursuant to 42 U.S.C. § 9604(e)); *In the Matter of Prop. located at 909 Wash. Street Oregon City Clackamas Cnty. Or.*, No. 11-MC-9100 (D. Or. Apr. 12, 2011) (Administrative Warrant for Entry, Sampling, and Inspection Pursuant to 42 U.S.C. § 9604).

1 Fowlow Decl. at ¶¶ 7, 13. Additionally, in July 2018, the EPA observed unknown and/or
2 unidentified materials improperly stored and released at the Site that likely meet the definition of
3 “hazardous waste” under RCRA or “hazardous substance or pollutant or contaminant” under
4 CERCLA. *Id.* Mr. Pillon’s professed “owner clean-up” actions on the Site without appropriate
5 disposal procedures also constitute a release or threat of release of hazardous substances or
6 pollutants or contaminants into the environment.

7 Because the presence of such hazardous substances and/or pollutants or contaminants poses
8 a potential threat to health and the environment, and specifically to the occupants of the Site and
9 the families in the adjacent homes and in neighboring houses, the United States respectfully
10 requests that the Court authorize the EPA to: (1) enter the Site for purposes of “determin[ing] the
11 need for response or the appropriate response or to effectuate a response action” at the Site,
12 42 U.S.C. § 9604(e)(3)(D); and (2) “inspect and obtain samples from any...location of any
13 suspected hazardous substance or pollutant or contaminant” and from “any containers or labeling
14 for suspected hazardous substances or pollutants or contaminants ...” at the Site, *id.* at §
15 9604(e)(4)(A), and (3) to remove and potentially dispose of hazardous substances or pollutants or
16 contaminants, including those stored in containers that pose a threat of release due to their
17 condition, and/or take other necessary cleanup measures “to prevent, minimize, or mitigate damage
18 to the public health or welfare or to the environment, which may otherwise result from a release
19 or threat of release,” *id.* at § 9601(24); *id.* at § 9604(a)(1).

20 IV. CONCLUSION

21 For the reasons set forth herein, the United States respectfully requests that this Court issue
22 an Administrative Warrant for Entry, Inspection, and Response Pursuant to 42 U.S.C. § 9604(e).
23 A proposed form of Warrant is filed herewith.

1 Dated this day of 15th day of November, 2018.

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3 Respectfully submitted,

4 ANNETTE L. HAYES
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6 

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